

## CHAPTER 7

### PROPERTY ACQUISITION

#### OVERVIEW

The purpose of this chapter is to provide TSEP recipients with information about the applicable state requirements of acquiring real property. Before beginning the acquisition process, the TSEP recipient should consider the following general principles:

- whenever possible, alternative sites should be considered that would eliminate the need for condemnation or displacement of property owners;
- good faith efforts should be made to negotiate property acquisitions that are mutually agreeable to all parties;
- property owners should be paid at least the appraised fair market value for acquired property and improvements; and
- **whenever possible, condemnation and litigation should be avoided and used only as a last resort. Condemnation of a property could potentially take several months to resolve and could cause expensive delays in the completion of the project.**

#### APPLICABLE STATE AND FEDERAL REQUIREMENTS

##### STATE

Relocation Assistance/Fair Treatment of Condemnees, Title 70, Chapter 31, Montana Code Annotated (MCA), is the state statute that allows compliance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

Eminent Domain, Title 70, Chapter 30, Montana Code Annotated (MCA), is the state statute that defines statutory policies and procedures for exercising the right of eminent domain for public uses.

##### FEDERAL

Title IV of the *Surface Transportation and Uniform Relocation Assistance Act of 1987*, more commonly known as the *Uniform Relocation Act Amendments of 1987*, which amends the 1970 Uniform Relocation Act.

*Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, which provides uniform procedures for the acquisition of real property for federal or federally assisted projects, and ensures the uniform and equitable treatment of persons and businesses displaced as a result of federal or federally assisted projects.

## **TSEP RECIPIENT RESPONSIBILITIES**

For each acquisition activity, the TSEP recipient must determine whether federal funds will pay for any project costs. If federal funds are involved in the project, TSEP recipients must comply with the federal law, the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, including the 1987 amendments. If the project results in displacement of persons or businesses by the acquisition, the affected persons or entities are entitled to relocation assistance under the Uniform Act regardless of whether the acquisition is voluntary or non-voluntary. Local officials should contact any federal funding agency participating in their project for guidance, if the TSEP project will be subject to the Uniform Act.

When federal funds are not involved in the project, the TSEP recipient can negotiate property acquisitions that are mutually agreeable to all parties (voluntary acquisition) or exercise the power of eminent domain if negotiations do not lead to a mutual agreement (involuntary acquisition).

## **VOLUNTARY ACQUISITIONS**

Once it has been determined that a specific property is needed for the project, you should make good faith efforts to negotiate a mutually agreeable contract for the acquisition of the property. The following procedures provide some guidance in completing a voluntary acquisition:

1. As a general rule, property owners should be paid at least the appraised fair market value for acquired property and improvements. Real property being acquired through voluntary acquisition should be appraised in order to assure that fair market value is paid for the acquisition. An appraisal is not necessary for a voluntary acquisition in the following situations:
  - a) if the landowner agrees to donate the property;

- b) if the TSEP recipient determines that an appraisal is unnecessary because the determination of valuation is uncomplicated and the fair market value is estimated at \$2,500 or less, based upon a review of available data by a person familiar with real estate values (with a written explanation of the basis for the estimate kept in the TSEP recipient's project files). However, if requested by the landowner, the TSEP recipient should obtain an appraisal; or
  - c) if the property owner agrees to waive the appraisal, and such approval is obtained in writing.
2. If TSEP funds will be used to pay for an acquisition, the following documents must be retained in the TSEP recipient's project file:
- a description of the property and reasons for its acquisition,
  - name of the appraiser,
  - date of appraisal,
  - appraised value of the property,
  - copy of the appraisal,
  - copy of the contract for sale,
  - purchase price of the property,
  - settlement costs,
  - donation agreement (if applicable),
  - recorded deed of property to the TSEP recipient, and
  - proof of payment.

## INVOLUNTARY ACQUISITIONS

Section 70-30-101 through 322, MCA describes the procedures set out in state law for counties and municipalities when exercising the power of eminent domain. Eminent domain is the right of a local government to take private property for public use. The following is a general summary of the legal procedures that must be followed under Montana law. In all cases, local officials should consult the full text of the current law before proceeding with the acquisition.

The legal procedures for local governments to acquire property through eminent domain can potentially take several months to complete. The local government is required to first give 30 days written notice before its agents can enter upon the land. Next, a complaint must be filed and a summons issued to begin the eminent domain process. It can potentially take six months or more to commence a trial on the issue of whether a preliminary condemnation order should be issued. Within 30 days of the preliminary condemnation order, the landowner must file a claim to compensate him or her for loss of the property. The local government then has

20 days to accept the claim. If the claim is not accepted, the court will have to determine the appropriate compensation. The process of determining the appropriate compensation, and potentially a court appeal of that decision, could add another three to four months.

The process just described does not provide all of the information required to begin condemnation proceedings, and is intended only to provide you with a brief description of what could occur. As you can see, the process of acquiring land through eminent domain is lengthy and should be avoided, if possible.

It is essential for any TSEP recipient involved in a condemnation proceeding to work closely with their attorney to ensure compliance with relevant state and federal laws. If the TSEP recipient has no other choice than to proceed with condemnation and TSEP funds will be used to pay for the acquisition, the TSEP recipient must also maintain all documentation related to the condemnation proceedings, in addition to the documents discussed above under voluntary acquisition.